

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of  
Noble Trust Company**

**AFFIDAVIT OF ROBERT A. FLEURY IN SUPPORT OF  
LIQUIDATOR'S MOTION FOR APPROVAL OF SETTLEMENT AND RELEASE  
AGREEMENT WITH INVESTORS INDEPENDENT TRUST COMPANY**

I, Robert A. Fleury, hereby depose and say:

1. I am the former Deputy Bank Commissioner for the State of New Hampshire and former liquidator of Noble Trust Company ("Noble Trust"). I have been retained as Special Deputy Liquidator by Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as liquidator (the "Liquidator") of Noble Trust. I am involved in and have oversight of the liquidation of Noble Trust. I have familiarity with the books and records of Noble Trust and have participated in numerous meetings associated with the matters set forth herein.

2. I submit this affidavit in support of the Liquidator's Motion for Approval of Settlement and Release Agreement with Investors Independent Trust Company (the "Motion"). As set forth more fully in the Motion, the Liquidator has entered into a Settlement and Release Agreement by and between Investors Independent Trust Company ("IITC") and the Liquidator (the "Settlement Agreement").

3. Colin P. Lindsey ("Lindsey") was the president of Noble Trust and chairman of its board of directors. During the course of its business, Noble Trust solicited and received funds from both new and existing clients. Noble Trust's clients' funds were maintained as individual

management accounts or individual retirement accounts established for the benefit of those clients, or held in charitable trusts for which Noble Trust clients were both the grantors and beneficiaries during their lives.

4. Between June 2004 and September 2007, Noble Trust (acting as a trustee under its clients' trusts) invested approximately \$15 million in an entity known as Sierra Factoring, LLC ("Sierra"). Based upon information available to the Liquidator, the \$15 million investment in Sierra became substantially or entirely worthless, a fact that Lindsey did not disclose to Noble Trust's clients.

5. Instead, Lindsey attempted to conceal the loss from Noble Trust's clients and other parties in interest (including the Banking Department) through a fraudulent and illegal Ponzi scheme. In 2006 and 2007, Sierra stopped paying monthly "interest" payments to Noble Trust, which had until that time, been paid to Noble Trust clients invested in Sierra. To make the monthly payments its clients were accustomed to, Noble Trust began using, among other sources, money from newer investors to make the monthly payments. Noble Trust also used funds from newer investors to repay older investors' principal investment in Sierra.

6. The Liquidator is in the process of marshaling the assets of Noble Trust in order to maximize the value of the liquidation of Noble Trust for the benefit of creditors. Among his other powers, the Liquidator is authorized to assert any claims that may be brought by or on behalf of Noble Trust or Aegean Scotia.

7. In October, 2003, Noble Trust contracted with IITC through a Service Agreement dated October 1, 2003 (the "Service Agreement") to serve as record keeper and custodian of accounts (including trusts, investment management accounts, or investment retirement accounts) held through Noble Trust, whether as trustee, trust or account

administrator, or investment manager (collectively “Client Accounts”). Under the Service Agreement, IITC had certain specified duties and responsibilities, including to collect, deposit, and post income and distribute it to the appropriate accounts. In return, IITC collected a monthly fee from each account for which it was a custodian. IITC served Noble Trust under the Service Agreement until March 2007.

8. In furtherance of maximizing the liquidation estate, on or about March 27, 2009, the Liquidator filed a demand for arbitration against IITC, which arbitration has been conducted by agreement of the parties at the Judicial Arbiters’ Group, Case No. JAG No. 10-1552A (the “Arbitration”). In the Arbitration proceeding, the Liquidator has alleged that while custodian and administrator of the Client Accounts, IITC aided and abetted the breach of fiduciary duties owed to Noble Trust and its clients by Lindsey and Lisa Ordway Elliott, two officers of Noble Trust, breached fiduciary duties owed by IITC to Noble Trust and its clients, and breached the terms of its Service Agreement with Noble Trust. The Liquidator has alleged in the Arbitration that total losses to Noble Trust and its clients arising from wrongful acts of IITC, after subtraction of recoveries obtained by the Liquidator range between \$4 million and \$5 million.

9. In the Arbitration, IITC denies both wrongdoing and liability with respect to the Liquidator’s claims and has asserted a counterclaim in the Arbitration against the Liquidator, and, absent the Settlement Agreement, would assert numerous defenses to the Liquidator’s claims. For example, IITC argued that the aiding and abetting claim was barred by Colorado’s economic loss rule. IITC also asserted that the Liquidator could not prove a causal link between the violations that he was alleging and the damages he was seeking.

10. Furthermore, the Liquidator sought a settlement that would result in immediately available funds for the liquidation estate, with no future risk of collection. IITC asserted that it

had no assets to satisfy a judgment other than an insurance policy. Because the pertinent IITC insurance policy is a “wasting” policy, it was advantageous for the Liquidator to negotiate a settlement without either side incurring further costs on litigation.

11. The Liquidator has reached a settlement with IITC. Under the Settlement Agreement, IITC shall pay to the Liquidator \$325,000.00 (the “Settlement Amount”) within twenty days of the mutual execution of the Settlement Agreement. The Liquidator has agreed to hold the Settlement Amount in an escrow account pending Court Approval (defined below). Upon Court Approval, the Settlement Amount will become part of the liquidation estate to be distributed or used by the Liquidator as appropriate.

12. By its terms, the Settlement Agreement is subject to the entry of a final order by the Liquidation Court in the Liquidation Proceeding approving the Settlement Agreement (the “Court Approval”). Court Approval shall be deemed to occur on the date that this Court’s order approving the Settlement Agreement shall have become non-appealable or, in the event of an appeal, has been affirmed after all appeals therefrom have been exhausted.

13. Upon Court Approval, Liquidator, in his capacity as Liquidator and on behalf of Noble Trust (for itself and in any and all capacities in which it is named or has acted with respect to the Client Accounts), shall release IITC from and against any and all claims, demands, obligations, liabilities, and causes of action, of any nature whatsoever, at law or in equity, asserted or unasserted, known or unknown, relating in any way to the IITC Custodianship; provided, however, that the release does not constitute a release of any claims of the Liquidator against any other person or entity.

14. Upon Court Approval, IITC, including without limitation successors in whole or in part of the operations of IITC as conducted during the period 2003 through 2008, shall

release the Liquidator, Noble Trust and holders of the Client Accounts from and against any and all claims, demands, obligations, liabilities, and causes of action, of any nature whatsoever, at law or in equity, asserted or unasserted, known or unknown, relating to the IITC Service Agreement, the services provided, or not provided, by IITC or by Noble Trust pursuant thereto, or the conduct of any of the parties' reciprocal obligations in connection therewith or any other action or inaction relating to such Service Agreement, services, conduct or inaction (collectively, the "IITC Custodianship") except as set forth in the Settlement Agreement.

15. The Court Approval shall bar any and all third parties (including, but not limited to, all holders or beneficiaries of Client Accounts) and any and all other persons or entities claiming an interest in the IITC Custodianship (collectively "Third Parties") from pursuing claims against IITC, its directors, officers, employees, representatives, affiliates, successors and assigns related in any way to the IITC Custodianship, the accounts and monies administered by IITC (the "NTC and Client Accounts"), or the Settlement Agreement, The Court Approval shall further bar Third Parties from pursuing claims against IITC, the Liquidator or Noble Trust, asserted by, through, or under the NTC and Client Accounts. All liens, claims, encumbrances and interests in such NTC and Client Accounts asserted by any and all Third Parties shall be administered and adjudicated in the Liquidation Proceeding in conjunction with the Liquidator's Plan of Liquidation and pursuant to further order(s) of the Liquidation Court. Notwithstanding any bar of claims, however, nothing in the Settlement Agreement shall prevent any Noble Trust investor or client that held a Client Account from continuing to assert a timely filed claim against the liquidation estate of Noble Trust and Aegean Scotia.

16. The Settlement Agreement is the result of arms-length negotiations between the parties and their counsel and is a fair, reasonable and adequate resolution of the parties' dispute.

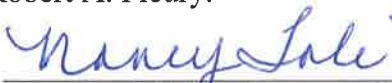
The Settlement Agreement will result in the payment of a material sum to the estate and resolve the Arbitration proceeding. Therefore, the Settlement Agreement maximizes the value of the liquidation of Noble Trust by creating a fund that will be available to claimants of the estate, subject to further order of the Court, and relieves the estate of further costs and from the inherent uncertainty of the pending litigation. The Liquidator believes that entering into the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment.

Signed under the pains and penalties of perjury this 21st day of February, 2014.

  
Robert A. Fleury

STATE OF NEW HAMPSHIRE  
COUNTY OF Hillsborough

Signed before me on February 21, 2014 by Robert A. Fleury.

  
Notary Public/Justice of the Peace  
My Commission Expires:



## CERTIFICATE OF SERVICE

I, Christopher M. Candon, hereby certify that on February 27, 2014, a copy of the foregoing was served by first class mail, postage prepaid on the parties listed below.<sup>1</sup>

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Christopher M. Candon

<sup>1</sup> Simultaneously herewith, the Liquidator has filed a Certificate of Service that evidences a broader service on claimants and other parties in interest.